



Rule Fact Sheet – Preliminary Adoption

February 3, 2010

**DEVELOPMENT OF AMENDMENTS TO RULES AT 326 IAC 2
CONCERNING AIR PERMIT RULES (PERMIT FIX-UP RULE)**

LSA Document #07-372

Overview

This rule amends 326 IAC 2 to address consistency and federal approvability issues in the air permit rules, as well as make corrections and provide clarity.

Citations Affected

Amends: 326 IAC 2-1.1-1; 326 IAC 2-1.1-3; 326 IAC 2-1.1-12; 326 IAC 2-2-1; 326 IAC 2-2-2; 326 IAC 2-2-4; 326 IAC 2-2-5; 326 IAC 2-2-7; 326 IAC 2-2-8; 326 IAC 2-2-10; 326 IAC 2-2.2; 326 IAC 2-2.3; 326 IAC 2-2.6; 326 IAC 2-3-1; 326 IAC 2-3-2; 326 IAC 2-3-3; 326 IAC 2-3.2; 326 IAC 2-3.3; 326 IAC 2-5.1-2; 326 IAC 2-5.1-3; 326 IAC 2-5.5-2; 326 IAC 2-6.1-3; 326 IAC 2-7-1; 326 IAC 2-7-4; 326 IAC 2-7-5; 326 IAC 2-7-6; 326 IAC 2-7-10.5; 326 IAC 2-7-12; 326 IAC 2-7-20; 326 IAC 2-8-1; 326 IAC 2-8-3; 326 IAC 2-8-4; 326 IAC 2-8-11.1; 326 IAC 2-8-15.

Repeals: 326 IAC 2-1.1-12; 326 IAC 2-2.2; 326 IAC 2-2.3; 326 IAC 2-2.6; 326 IAC 2-3.2; 326 IAC 2-3.3.

Affected Persons

This rulemaking potentially could impact anyone required to obtain an air permit in Indiana.

Reasons for the Rule

Revisions that enable the United States Environmental Protection Agency (U.S.

EPA) to approve rules will provide additional consistency between state and federal requirements. This rulemaking will also make corrections and provide clarification.

Economic Impact of the Rule

This rule does not impose any new requirements or restrictions on affected businesses, and therefore there is no fiscal impact associated with this rulemaking.

Benefits of the Rule

Both industry and the public will benefit from the clarifications and corrections to be made by providing language that is easier to understand. The rulemaking also provides additional consistency between state and federal rules.

Description of the Rulemaking Project

U.S. EPA has identified revisions needed for federal approval of amendments to the Title V Permit Program and the minor new source review rules, and amendments resulting from litigation of the federal New Source Review (NSR) reform regulation. U.S. EPA has also made several suggestions for revisions for clarity and consistency. Other revisions are needed to address federal changes to these programs. These changes are

consistent with amendments in the following Federal Registers:

- NSR reform changes – removal of vacated items – June 13, 2007, 72 FR 32526.
- Reasonable possibility in record keeping – December 21, 2007, 72 FR 72607.
- Changes to Title V definition of "applicable requirement" – June 3, 2004, 69 FR 31498.
- Compliance Assurance Monitoring (CAM) – October 22, 1997 (62 FR 54900).

Title V Permit Program

On March 20, 2002, IDEM submitted amendments to Indiana's Title V Program to U.S. EPA, Region V. U.S. EPA has identified various concerns with Indiana's Title V program. Many of the concerns are in regards to the definition of "insignificant activity" in the Title V permit program rules at 326 IAC 2-7-1(21). IDEM is working with U.S. EPA to clarify the language in order to obtain federal approval of the program. Some proposed changes are included in this rulemaking. Others will be dealt with during rulemakings for the Article 2 Initiative that IDEM is starting at this time to deal with issues that require more discussion with affected stakeholders than the type of changes included in this rulemaking. Some of the changes in this rulemaking are:

- Adding a time frame for bridge fabrication under 326 IAC 2-1.1-3(e)(10)(I) and 326 IAC 2-7-1(21)(K)(vi)(II).
- Restructuring the definition of insignificant activity under 326 IAC 2-7-1(21) so that language related to insignificant and trivial activities that was located at the end of the definition is now located at the beginning.

- Repealing the emission cap program at 326 IAC 2-1.1-12, and deleting references to 326 IAC 2-1.1-12 in order to address issues that U.S. EPA also has identified related to the minor new source review (minor NSR) SIP submittal that will impact approval of the Title V program.

Minor New Source Review

On February 3, 1999, IDEM submitted amendments to Indiana's minor NSR rules. U.S. EPA has identified concerns with certain provisions that impact the minor NSR rules at 326 IAC 2 that must be changed before federal approval will be granted. IDEM is proposing to make the necessary revisions through this rulemaking and is continuing to work with U.S. EPA to determine if any additional issues that affect approvability need to be addressed. Changes related to the minor NSR SIP submittal include the following:

- In 326 IAC 2-1.1-3(e), clarify that modifications subject to 326 IAC 2-2, Prevention of Significant Deterioration, or 326 IAC 2-3, Emission Offset, are excepted from this subsection.
- Remove the confusing phrase, "when subject only to specific emission limits contained in this title" and clarify the intent of the provisions in 326 IAC 2-1.1-3(h)(2).
- Remove the emission cap provisions in 326 IAC 2-1.1-12 and all references to it in the permitting rules.

New Source Review Reform

On December 31, 2002, U.S. EPA published revisions to the federal Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) regulations in 40 CFR Parts 51 and 52 (67 FR 80186). These revisions are commonly referred to as "NSR reform" regulations and became effective on March 3, 2003. The revisions

include provisions for baseline emissions determinations, actual-to-future actual methodology, plant-wide applicability limits (PAL), clean units, and pollution control projects (PCP). Indiana adopted the NSR reform rules and submitted a request for a state implementation plan (SIP) revision to U.S. EPA on September 2, 2004. On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit issued a ruling on challenges to the December 2002 NSR reform revisions that vacated both the clean unit and the PCP provisions. In addition, the court remanded to U.S. EPA the provision that requires record keeping and reporting for sources that elect to use the actual-to-projected actual emission test only where there is a reasonable possibility that a project may result in a significant net emissions increase. Indiana submitted revised requests to U.S. EPA requesting that no action be taken on the clean unit and PCP provisions and on the remanded provision.

On June 18, 2007, U.S. EPA published a partial approval of Indiana's NSR reform revisions for rules to implement the NSR reform provisions that have not been vacated by the June 24, 2005, court decision. Because the clean unit and PCP provisions of the rule have been vacated, IDEM proposes to remove them from Indiana's air permit rules. U.S. EPA has addressed the remanded "reasonable possibility" provision in a Federal Register published on December 21, 2007 (72 FR 72607). IDEM is proposing changes consistent with U.S. EPA's action within the PSD rules at 326 IAC 2-2-8(b) and 326 IAC 2-3-2(l) in the draft rule language. IDEM will update the permitting rules in the future, if necessary, due to the Obama administration's recent

decision to grant a petition for reconsideration of this rule.

IDEM is also making revisions to Title V permit rules for consistency with federal rulemaking actions, such as the Compliance Assurance Monitoring (CAM) rule. The revised compliance certification language at 326 IAC 2-7-6(5)(C) is consistent with the Title V compliance certification language at 40 CFR 70.6(c).

Miscellaneous Changes

There are also many changes throughout the draft rule that change "including the following" to "as follows" to address U.S. EPA's concern that the condition be limited to the provisions listed instead of leaving it open to include other items that may not be listed. There are also clean-up changes to delete definitions of "major modification", "minor modification", "major source", and "plant-wide applicability limit" in 326 IAC 2-1.1-1 as they are not needed to be defined in this section. Several other changes also address consistency, correct mistakes, or conform to administrative procedures for rule development.

Sections Being Repealed

The following sections of Title 326 would be repealed as a result of this rulemaking:

- 326 IAC 2-1.1-12 Emissions Cap Programs
- 326 IAC 2-2.2 Clean Unit Designations in Attainment Areas
- 326 IAC 2-2.3 Pollution Control Project Exclusion Procedural Requirements in Attainment Areas
- 326 IAC 2-2.6 Federal NSR Requirements for Sources Subject to P.L. 231-2003, SECTION 6, Endangered Species
- 326 IAC 2-3.2 Clean Unit Designations in Nonattainment Areas

- 326 IAC 2-3.3 Pollution Control Project Exclusion Procedural Requirements in Nonattainment Areas

Scheduled Hearings

First Public Hearing: February 3, 2010, Room C, Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana.

Second Public Hearing: To be determined.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant, animal, or aquatic life; or

- (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The rulemaking is consistent with federal rules.

Rulemaking Process

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments and the department's responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The Air Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with the Legislative Services Agency.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Susan Bem, Office of Air Quality, Rule and State Implementation Plan (SIP) Development Section, (317) 233-5697.